

89-213

NO. 83-213

Supreme Court, U.S.

FILED

NOV 30 1989

JOSEPH F. SPANIOL, JR.

CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

COMMONWEALTH OF PENNSYLVANIA,

Petitioner

v.

INOCENCIO MUNIZ,

Respondent

ON WRIT OF CERTIORARI
TO THE SUPERIOR COURT OF PENNSYLVANIA
MIDDLE DISTRICT

JOINT APPENDIX

J. MICHAEL EAKIN*
DISTRICT ATTORNEY OF
CUMBERLAND COUNTY,
PENNSYLVANIA

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Counsel for Petitioner

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PETITION FOR CERTIORARI FILED JULY 6, 1989
CERTIORARI GRANTED OCTOBER 16, 1989

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RELEVANT DOCKET ENTRIES

IN THE COURT OF COMMON PLEAS OF
CUMBERLAND COUNTY, PENNSYLVANIA

172 CRIMINAL 1987

(Title omitted in printing)

FILED: May 8, 1987

PAGE 10

IN RE: OMNIBUS PRE-TRIAL MOTIONSORDER OF COURT

AND NOW, May 1, 1987, 2:44 p.m.,
after hearing and consideration of the
testimony presented and the cases presented by
counsel, defendant's motion to dismiss the
prosecution is overruled and dismissed; the
defendant's motion to suppress evidence
against the defendant is refused and
dismissed.

By the Court,

George E. Hoffer, J.

LODGED: JUNE 29, 1987

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FILED: JULY 6, 1987

IN RE: NON JURY TRIAL PROCEEDINGS

BEFORE: HONORABLE GEORGE E.
HOFFER, J.

DATE : Wednesday, May 20, 1987,
1:30 p.m.

PLACE : Courtroom No. 3
Cumberland County
Courthouse
Carlisle, Pennsylvania

Containing 24 pages

FILED: MAY 22, 1987

PAGE 13

STATE EXHIBIT 1

FILED: MAY 22, 1987

PAGE 14

IN RE: NON-JURY TRIALORDER OF COURT

AND NOW, May 20, 1987, 2:57 p.m.,
after hearing and consideration of the
evidence presented, we do find beyond a
reasonable doubt that the defendant is guilty
of Counts A and B.

By the Court,

George E. Hoffer, J.

FILED: OCTOBER 29, 1987

PAGE 20

IN RE: MOTION FOR NEW TRIAL
 AND IN ARREST OF JUDGMENT
 BEFORE HOFFER, J. and
 BAYLEY, J.

OPINION AND ORDER OF COURT

Containing 4 pages

IN RE: MOTION FOR NEW TRIAL
 AND IN ARREST OF JUDGMENT
 Before HOFFER, J.
 and BAYLEY, J.

ORDER OF COURT

AND NOW, October 29, 1987,

defendant's motion for new trial and in arrest of judgment are DENIED. Upon completion of a short-form pre-sentence investigation report by the Probation Office, the defendant is directed to appear for sentence at the call of the District Attorney.

By the Court,

George E. Hoffer, J.

DEFENDANT'S OMNIBUS PRETRIAL MOTION

IN THE COURT OF COMMON PLEAS OF
 CUMBERLAND COUNTY, PENNSYLVANIA

172 CRIMINAL 1987

(Title omitted in printing)

ORDER

AND NOW, this 14th day of April, 1987, upon consideration of the foregoing Omnibus Pre-Trial Motion and upon oral motion of Carl B. Stoner, Jr., Esquire, attorney for the defendant, Inocencio Muniz, a hearing on said Motion is scheduled for the 1st day of May, 1987 at 1:30 p.m. in Court Room 3, Cumberland County Court House, Carlisle, Pennsylvania.

By the Court,

George E. Hoffer, J.

IN THE COURT OF COMMON PLEAS OF
CUMBERLAND COUNTY, PENNSYLVANIA

172 CRIMINAL 1987

(Title omitted in printing)

OMNIBUS PRE-TRIAL MOTION

TO THE HONORABLE JUDGES OF THE SAID COURT:

The defendant, INOCENCIO MUNIZ, by his attorney, Carl B. Stoner, Jr., makes the following Omnibus Pre-Trial Motion pursuant to R.Crim.P. 306, and in support thereof avers the following:

I. MOTION TO DISMISS PROSECUTION

1. The defendant's motion to dismiss the prosecution is made because the statute in question 75 Pa. C.S.A. Section 3731, is unconstitutional.

2. 75 Pa. C.S.A. Section 3731(f) is unconstitutional in that it is in direct conflict with Pennsylvania Rules of Criminal

Procedure 141(d), 145 and 151 thus making it violative of Article V, Section 10(c) of the Pennsylvania Constitution.

3. 75 Pa. C.S.A. Section 3731 is unconstitutionally vague under the standards of the Federal and Pennsylvania Constitutions in that there is no rational basis for the .10% per se violation standard as enumerated in Section 3731(a)(4) or for the presumption that any scientific test results are valid.

4. 75 Pa. C.S.A. Section 3731 is unconstitutional in that Section 3731(a) improperly shifts the burden of proof onto the defendant and destroys the presumption of innocence which is violative of the due process guarantees of the Federal and State Constitutions.

5. 75 Pa. C.S.A. Section 3731 is unconstitutional in that the mandatory sentencing provisions of the statute under which the defendant is charged are unconstitutional in that they violate the due process clauses of the United States and

Pennsylvania Constitutions and violate the ex post facto clauses of the Federal and State Constitutions. (State Constitution Article I, Section 17).

WHEREFORE, the defendant, INOCENCIO MUNIZ, respectfully requests this Honorable Court dismiss the prosecution on the basis of the unconstitutional nature of 75 Pa. C.S.A. Section 3731 under both the Federal and State Constitutions.

II. MOTION TO SUPPRESS EVIDENCE

The defendant, INOCENCIO MUNIZ, moves this Honorable Court to suppress all evidence pursuant to Pa.R.Crim.P. 323 and in support thereof avers the following:

1. The arresting officer failed to advise the defendant of his rights to have his personal physician examine him in lieu of taking a breathalizer [sic] test and failed to advise him that he could submit to a blood test rather than a breathalizer [sic] test as

required by the laws of the Commonwealth of Pennsylvania.

2. The evidence gathered as a result of the arrest, search and seizure of the defendant was obtained illegally in that said search was performed without a warrant and without probable cause whatsoever.

3. Any evidence obtained by the Commonwealth from observation or interrogation of the defendant, before, during or after the above described searches and seizures was obtained without a warrant and without probable cause whatsoever.

4. Any oral or written statements, confessions or admissions allegedly obtained from the defendant were the product of illegal warrantless arrest performed without probable cause, and were without the defendant being advised of his rights pursuant to the case law of the United States of America, and were not the result of a voluntary, intelligent and knowing waiver of his right to remain silent.

5. Expert and/or opinion testimony or evidence obtained as a result of the above arrest, searches and seizures, including but not limited to any investigation, analysis, report, or scientific study anything searched or seized from the defendant was obtained through a warrantless arrest without probable cause and should be suppressed.

WHEREFORE, the defendant, INOCENCIO MUNIZ, respectfully requests this Honorable Court grant his motion pursuant to Pa.R.Crim.P. 306 and 323, and suppress the evidence of any and all scientific tests, chemical or otherwise performed on the defendant on the basis of an illegal arrest and/or search and seizure and further suppress all physical evidence as well as any statements or confessions, on the basis of said illegal arrest and/or search and seizure.

Respectfully submitted,

Carl B. Stoner, Jr.,
Attorney for Defendant,
Inocencio Muniz

IN THE COURT OF COMMON PLEAS OF CUMBERLAND COUNTY, PENNSYLVANIA

172 CRIMINAL 1987

(Title omitted in printing)

IN RE: NON-JURY TRIAL PROCEEDINGS

[4]

DIRECT EXAMINATION

BY MR. EBERT:

Q Sir, would you please state your full name, and spell your last name for the record?

A I am David J. Spotts,
S-p-o-t-t-s.

Q And where are you employed, sir?

A I am employed by the Upper Allen Township Police Department. My current rank is corporal.

Q Were you so employed on November 30, 1986, a Sunday?

A Yes, I was. However, at that time I was a patrol officer.

Q How long have you been employed by the Upper Allen Township Police Department?

A I have been employed by Upper Allen since March 14, 1978.

Q How long have you been involved in police work as a police officer?

A Since July 17, 1975.

Q Have you ever been involved in any arrests for Driving Under the Influence in this state?

A Yes, numerous.

Q And have you observed intoxicated people while performing your duties as a police officer?

A Once again, very many times.

Q Turning your attention specifically to Sunday, November 30, 1986, at approximately 2:50 a.m., in the early morning hours of that Sunday, were you on duty at that time, sir?

A Yes, I was.

Q And what were you wearing at that time?

A I was in full uniform.

Q What type of duty were you performing, sir?

A I was on -- at that particular time I was on routine patrol duty. I was traveling north on U.S. Route 15 and was approaching the intersection with Pa. Route 114.

Q Were you operating a police vehicle at that time?

A Yes, sir.

Q What, if anything, unusual caught your attention at that time?

A As I came up on the intersection -- this would have been about 2:51 in the morning -- I observed a vehicle off on the berm of the road on U.S. Route 15 northbound. This vehicle had its four-way flashers activated and there were two people in the vehicle. At that time my first thought was it was a disabled vehicle, since it was almost 3 in the morning. So I stopped to offer assistance.

I pulled up behind that vehicle, put the four-ways on on my cruiser, got out and walked up to the driver's side door of the vehicle. There were two Hispanic males located in the front seat. The person who was seated behind the wheel of the vehicle was the defendant in today's proceeding, who is seated to my far left at the defense table.

Q Is the same individual you saw that early morning Sunday, November 30th?

A That is correct.

Q Now, what transpired then, sir?

A I asked him what the problem was. At that point still believing that there was, you know, a mechanical or disablement problem. He advised me then that he had stopped to urinate, although those weren't the exact words he used. When he talked at that point, I immediately detected a strong odor of alcoholic beverage on his breath. His eyes were also bloodshot and glazed over. His face appeared flushed. Even at that point while he was sitting in the vehicle, he didn't appear

to have good command of his coordination skills. So at that point I advised him that I didn't feel that he should be driving, he should wait there, remain alongside the road until he was in a condition to drive safely.

Q What happened then, sir?

A Well, at that point, we have eye-to-eye contact, I am looking directly at him, he says okay, I will. I once again repeated, I said, I mean it, I don't want you driving until you can drive. I believe I even said at that point I think you're too drunk to drive, stay on the side of the road, wait there. And again he said okay. He is looking directly at me, you know, I mean we are eye-to-eye contact, he says okay.

At that point I turned to return to my cruiser. I didn't even get the door open on my cruiser to get back into it when I heard the vehicle start to move forward again, the stones crunching on the gravel, things along the berm of the road. I turned around to see the vehicle being operated by the defendant

pulling back out on to the highway to travel north on U.S. Route 15.

Q Had the engine been running all this time?

A Yes.

Q So even when you stopped the first time, the motor was running on the car?

A Yes.

Q So he pulls out on to the road. At that time had he used his signals to enter the lane of traffic?

A No, he did not.

Q Was that the basic for the summary citation you filed on this charge?

A Yes, that is correct.

Q Now, once he pulled out, after you admonished him not to, what did you do then, sir?

A I got back into my cruiser, activated the emergency warning lights and pulled him over approximately a half mile farther down the road.

Q And what happened?

A At that point, I asked him to step out of the vehicle and submit to some field sobriety tests.

Q Had you requested that he produce the registration and license plate?

A Yeah, first, yes, that is correct. In the initial contact I had with him, I did not ask him to produce any identification for him. The second time when I stopped him, after I saw him pull back out, I did ask him to produce a driver's license and registration card. He got out his wallet --

MR. STONER: If it please the court, I would like to object just for the purpose of preserving the points in the pretrial motion. I don't want to continue to object. I would ask that this be a continuous objection to any evidence or any testimony relative to what the defendant said or did or any tests performed or what the officer said or did from the time he was stopped the second time until the Miranda warnings were given to him, I think

4:27 a.m. or whatever. Just for the record I would like to have a continuing objection. This was the basis of our pretrial motion which has previously been decided.

THE COURT: The officer's observations of the defendant in the vehicle, is that what you are saying?

MR. STONER: I was saying after he stopped him the second time, it is our position that he was actually under arrest at that time. I think the officer started to testify he asked him to do something. And from that point on I would like to object to any testimony.

THE COURT: I am not sure I understand the basis for objecting to the officer's observations, but I note your objection.

MR. STONER: Okay.

BY MR. EBERT:

Q Was he able to produce the cards you requested?

A When he opened up his wallet, he had a lot of different cards in it, and he was fumbling through the cards, some dropped. He picked them up. He handed me two cards. I asked him to produce his driver's license and vehicle registration. He handed me two cards, one of which was a Social Security card. And the other was some kind of identification card, reference to farm or migrant labor. But it was a -- I believe a U.S. Department of Agriculture, some type of identification card.

Q He didn't provide you with what you had asked for?

A No. I returned those two to him and asked him once again. I told him I asked for your driver's license and registration card. After some more fumbling and dropping the cards, he did finally produce his driver's license and registration card for me.

Q Are you familiar with the term standard field sobriety tests?

A Yes.

Q Did you have occasion to administer field sobriety tests to this defendant?

A Yes, I did.

Q Generally what tests did you give him, sir?

A Horizontal gaze nystagmus, walk and turn, one-leg stand, in that sequence.

Q Have you been trained to administer those tests, sir?

A Yes, that is correct.

Q And prior to this occasion had you previously administered the tests in similar situations?

A Many times.

Q Without going into extreme detail, what was the result of the tests?

A He failed all three tests.

Q Now, after he failed the tests, sir, what action did you take then?

A I informed him then -- and this would have been about two minutes after three in the morning -- that he was under arrest for

Driving Under the Influence of alcohol. I attempted to put him into a position to search and handcuff him at the front of my cruiser. I was able finally to search him and handcuff him and had him -- put him in the back of my patrol vehicle. At about that time that I was placing him in the back of my patrol vehicle, Officer Scott Pellman from Mechanicsburg arrived to check on me. As is standard procedure for traffic stops at night.

Q Did the defendant make any statements to you that were not -- did you at any time question him at the scene?

A Except I asked -- except asking him to produce documents already testified to and I did ask him to submit to field sobriety tests.

Q Did he make any other statements though that weren't responsive to questions that you asked?

A Yes.

Q And what did he say?

A He made many statements on the scene indicating that he was drinking -- that he had been drinking beer, that he was drunk. He made statements, you got me, haven't you ever done this before? I'm drunk, I can't do these tests. Those kind of comments were made at the scene.

After he was placed in my patrol car, I transported him to the West Shore facility of Cumberland County Central Booking. While enroute there he made additional statements to me. I was not asking him any questions. I am not even speaking to him at all at that point. He kept saying -- he asked me if I could let him go. He asked me didn't I ever drink a few too many and go out driving on the roads. Which I responded to his questions to me, but I did not initiate any question with him. He made statements also relating the fact that he was drunk.

Q Did you finally get to the West Shore processing center?

A Yes.

Q And who did you release custody of the defendant to?

A Well, the booking agents on duty at that time were Terry Hosterman and Lisa Deyo. However, when I first arrived at the Booking Center they were processing another DUI suspect from a complete and unrelated incident. So I remained at the Booking Center in the holding area with the defendant for approximately 25 minutes until Agent Hosterman came out and then I released him to the custody of Agent Hosterman and I left.

Q Sir, do you have an opinion as to whether or not this defendant was intoxicated at the time he was driving his vehicle at 2:52 a.m. on the Sunday morning of November 30, 1986?

A Without a doubt, I have absolutely no reservation that the defendant was intoxicated, in my opinion.

MR. EBERT: Thank you, sir. Cross-examine.

MR. STONER: I have no questions, officer. Thank you.

MR. EBERT: Thank you. Call Lisa Deyo.

LISA T. DEYO, called as a witness, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. EBERT:

Q Ma'am, would you please state your full name, and spell your last name for the record?

A Lisa T. Deyo. D-e-y-o.

Q And where are you employed?

A At the Cumberland County Central Booking Center in the West Shore Police Records.

Q How long have you been performing duties with the Booking Center?

A Since October of 1986.

Q Had you been -- that is when the program started, is that correct?

A Yes.

Q Had you received any specific training in order to perform your duties with the Center, ma'am?

A At that time I was certified to operate the Intoxilyzer 5000.

Q Were you also trained in the use of the video equipment which is part of the Booking Center?

A Yes.

Q Were you present for the processing of this defendant, Inocencio Muniz, on the early morning hours of November 26th?

A Yes, I was.

Q And while I use the name Inocencio Muniz, do you see the person who you processed that morning in the court today?

A Yes, he is seated at the defense table next to Mr. Stoner.

THE COURT: What date did you give?

MR. EBERT: November 30th, I'm sorry.

BY MR. EBERT:

Q To clarify the record, you were on duty on the Sunday morning, November 30, 1986?

A Yes, I was.

Q And what [sic] is when Mr. Muniz, whom you have just identified, was processed?

A Yes.

Q During the course of the processing at the Booking Center, did Mr. Muniz execute a Miranda warning?

A He was read his Miranda warnings.

Q And did he eventually sign the warning statement?

A Yes, he did.

Q I am going to show you Commonwealth Exhibit No. 1. Do you recognize that?

A Yes.

Q And please tell the court what it is?

A It is the Miranda -- the standard Miranda warnings that we read to all of the DUI suspects whenever they are being processed after the intoxilyzer -- after they have been asked to take the Intoxilyzer 5000.

Q Who was with you on duty that day?

A Special Agent Terry Hosterman.

Q And did he co-sign underneath Mr. Muniz's signature?

A Yes, he did.

Q You were operating the video when Mr. Muniz actually signed the form?

A Yes, I was.

Q Now, I am going to show you Commonwealth Exhibit No. 2. Do you recognize that, ma'am?

A Yes, I do.

Q And what is that?

A That is the tape of the processing of Inocencio Muniz.

Q During the course of the -- of your processing, you indicated that you were an intoxilyzer operator?

A Yes, at that time I was.

Q Was the intoxilyzer at the West Shore processing center functional and available for testing that morning?

A Yes, it was.

Q Did you offer Mr. Muniz to take a test?

A Yes, I read to him the implied consent law several times. I did explain it to him. And he subsequently refused to take the Intoxilyzer 5000.

MR. EBERT: Your Honor, at this time I would move for admission of Commonwealth Exhibits 1 and 2 and propose to play the Commonwealth Exhibit 2 for the court.

MR. STONER: I would just object on the same basis as before, your Honor.

THE COURT: Commonwealth 1 and 2 are admitted.

You are going to play that on that machine.

MR. EBERT: Yes, sir.

THE COURT: All right. We need the lights out.

(Whereupon, the videotape was played for the court during which time the following questions and answers occurred.)

BY MR. EBERT:

That is you shown in Commonwealth Exhibit 2?

A Yes.

Q The individual that just spoke, is that Special Agent Hosterman?

A Yes, it is.

Q The person now seated in the chair on which you are now focusing, is that the defendant identified in court here today?

A Yes, that is Mr. Muniz.

Q Now, before we go on on the tape, there was a break here?

A We have to observe the defendant for 20 minutes. He was chewing gum when he walked in, and I noticed that at 0:400 [sic] hours. We would have had to observe him until 04:20 hours.

Q Where I just turned the tape off, am I correct that it was approximately 4:06 at that time?

A It was, yes.

Q And you would then have to wait how much longer then before you were able to administer the test?

A Approximately 14 minutes.

Q During that period did anything significant else happen while you observed the defendant?

A No, it did not.

MR. EBERT: Your Honor, at this time I would propose to advance the tape, unless Mr. Stoner would like to see the interim 14 minutes.

MR. STONER: No.

THE COURT: No what?

MR. STONER: No, I don't need to see the -- in response to his question, no, I don't want to see the intervening 14 minutes.

THE COURT: All right.

BY MR. EBERT:

Q You have now taken over as the intoxilyzer operator?

A That is correct.

Q Now, looking at Commonwealth Exhibit No. 1, that is why the no was crossed out and the yes was then written in?

A Yes, that is correct.

Q The last response to that last question was had he been drinking, is that correct?

A Yes, that is correct.

Q And the answer to the question was how many; how many did he indicate?

A He said 10 or 11 beers.

(Whereupon, more of the videotape was shown to the court.)

THE COURT: Is that the end of the tape?

MR. EBERT: It is not the end of the tape, Your Honor. I am willing to stop it here, unless Mr. Stoner would like to see the remainder.

THE COURT: Do you want him to keep playing it, Mr. Stoner? Perhaps there is something you wanted me to see on there.

MR. STONER: Just when the response to 10 or 11 beers, was there a question about over what period of time. Did I miss that? That was the only thing that would be of interest to me.

MR. EBERT: I will play it over.

MR. STONER: I have nothing further on this.

THE COURT: Anything else?

MR. EBERT: Your Honor, I have no further questions for this witness.

THE COURT: Mr. Stoner, any questions?

CROSS-EXAMINATION

BY MR. STONER:

Q The Commonwealth Exhibit No. 1, the Miranda warning, there isn't a time on that. But according to the video, I think 4:27 was when this was given to the defendant, is that correct?

A to the best of my knowledge.

MR. STONER: Okay, I have nothing further. Thank you.

MR. EBERT: Thank you. You may step down.

Your Honor, that would be the extent of the Commonwealth's evidence. We would move to rest at this time with the two exhibits already having been admitted.

THE COURT: The Commonwealth has rested, Mr. Stoner.

MR. STONER: We have nothing to present, your Honor.

THE COURT: Do I take it, Mr. Muniz, that you don't wish to testify?

MR. MUNIZ: I what?

THE COURT: Your counsel is saying that you do not wish to testify or present any evidence. Do you understand what I am saying?

MR. STONER: Your Honor, this is his wife, maybe she can interpret.

His Honor has asked you if you wish to testify. Do you wish to testify, yes or

no? Okay. Maybe you should state that. State that for the record. His Honor, Judge Hoffer, has asked you do you want to testify.

MR. MUNIZ: No.

MR. STONER: No.

MR. MUNIZ: No.

THE COURT: Is this the answer, that he does not want to testify, is that the answer?

MRS. MUNIZ: (Nods affirmatively.)

THE COURT: Mrs. Muniz nods yes, he doesn't want to testify.

MRS. MUNIZ: That is correct.

THE COURT: And Mr. Muniz does not dispute that.

Mr. Stoner, you have previously brought no problem to the attention of the court that this man had any language problem whatsoever. As a matter of fact, I looked on the tape and he didn't appear to have that much of a language problem to me on the tape. But if you thought he had one, sir, you should have brought it to my attention long before this.

MR. STONER: That is correct, your Honor. I agree, I did not think he has a language problem. It is just a couple words here and there apparently he did not understand. Testify happens to be one of them.

* * *

IN THE COURT OF COMMON PLEAS OF
CUMBERLAND COUNTY, PENNSYLVANIA

172 CRIMINAL 1987

(Title omitted in printing)

MOTION FOR A NEW TRIAL
AND IN ARREST OF JUDGMENT

AND NOW, this 1st day of June, 1987,
the above named defendant by his attorney,
Carl B. Stoner, Jr., Esquire, moves this Court
pursuant to Pa. Rule Criminal Procedure 1123
for a new trial and in arrest of judgment in
the above captioned matter for the following
reasons:

1. The verdict is contrary to the
evidence.

2. The verdict is contrary to the
law in that:

A. The Honorable Court erroneously
allowed into evidence statements made and acts
performed by the defendant prior to the
defendant being advised of his constitutional
rights against self-incrimination.

B. 75 Pa. C.S.A. Section 3731 is
unconstitutionally vague under the standards
of the Federal and Pennsylvania Constitutions
in that there is no rational basis for the 10%
per se violation standard as enumerated in
Section 3731(a)(4) or for the presumption that
any scientific test results are valid.

3. The defendant reserves the right
to file additional and supplemental reasons
for a new trial ten days after the Notes of
Testimony taken at the trial have been
transcribed and a copy thereof made available
to counsel for defendant.

Respectfully submitted,

Carl B. Stoner, Jr.
Attorney for Defendant

RELEVANT ORDERS AND OPINIONS BELOW

The relevant orders and opinions
below are appended to the Petitioner's
Petition for Writ of Certiorari, filed July 6,
1989, as Appendices A1 through D1.